

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SAD PROPERTIES, LLC,

Defendant.

NO.

CONSENT DECREE

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and SAD Properties, LLC (SAD, or Defendant) is to provide for remedial action at a Site where there has been a release or threatened release of hazardous substances. This Decree requires SAD to undertake the following remedial action(s):

(1) Provide access to its property located at 710 S. Lucile St. Property ("Property") for the purposes of installing, operating, and maintaining certain remedial measures;

(2) Consent to a groundwater conditional point of compliance on the Property, should such a conditional point of compliance be approved by Ecology in a final Cleanup Action Plan for the Site;

(3) Record a Restrictive Covenant for the Property, per WAC 173-340-440 (8) and (9), which limits future uses of the Property; and

(4) Agree to forego activities on the Property that are specified in the attached Restrictive Covenant that could have the effect of compromising remedial installations on the Property.

Ecology has determined that these actions are necessary to protect human health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the

1 Parties agree that settlement of these matters without litigation is reasonable and in the public
2 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

3 C. In signing this Decree, the Parties agree to its entry and agree to be bound by its
4 terms.

5 D. By entering into this Decree, the Parties do not intend to discharge non-settling
6 Parties from any liability they may have with respect to matters alleged in the Complaint. The
7 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
8 sums expended under this Decree.

9 E. This Decree shall not be construed as proof of liability or responsibility for any
10 releases of hazardous substances or for remedial action costs nor as an admission of any facts;
11 provided, however, that SAD shall not challenge the authority of the Attorney General and
12 Ecology to enforce this Decree.

13 F. The Court is fully advised of the reasons for entry of this Decree, and good
14 cause having been shown:

15 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as
16 follows:

17 II. JURISDICTION

18 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
19 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

20 B. Authority is conferred upon the Washington State Attorney General by RCW
21 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
22 notice and any required hearing, Ecology finds the proposed settlement would lead to a more
23 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
24 settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

25 C. Ecology has determined that a release or threatened release of hazardous
26 substances has occurred at the Site that has led to the contamination of groundwater and soil

1 gas on the SAD Property at 710 S. Lucile St.

2 D. SAD maintains that under the circumstances of this matter, SAD is not an
3 "owner or operator" under MTCA, RCW 70.105D.020(12)(b)(iv), because the hazardous
4 substances in Property groundwater came to be located solely as a result of groundwater
5 migration from a source off the Property. SAD has not caused or contributed to the release of
6 these hazardous substances, as substantiated by Section 4.1.1 of PSC's Final Hydraulic Control
7 Interim Measure Construction Work Plan, Volume 1, which states that "[c]oncentrations of
8 chlorinated solvents present in the SAD groundwater do not indicate the presence of a source
9 on the SAD property." In addition, SAD maintains that it does not engage in activities that
10 damage or interfere with the operation of remedial actions installed on the Property or engage
11 in activities that result in exposure of humans or the environment to the contaminated
12 groundwater that has migrated onto the Property. SAD is allowing both Ecology and PSC to
13 conduct remedial actions on the Property as required by Ecology.

14 E. Ecology maintains that at the time it purchased the Property, SAD had
15 knowledge or reason to know of the release of hazardous substances through migration onto
16 the Property and is thus a potentially liable person under RCW 70.105D.040(2) and (3)(b).

17 F. Rather than litigate these questions, the parties agree that a settlement of any
18 potential liability as outlined below is appropriate. For the purposes of this Decree, SAD
19 voluntarily accepts status as a potentially liable person with a waiver of its right to notice and
20 comment pursuant to WAC 173-340-500(5).

21 G. The actions to be taken pursuant to this Decree are necessary to protect public
22 health and the environment.

23 H. SAD has agreed to undertake the actions specified in this Decree and consents
24 to the entry of this Decree under MTCA.

III. PARTIES BOUND

A. This Decree shall apply to, benefit, and bind the Parties to this Decree. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. SAD agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter SAD's responsibility under this Decree. SAD shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

B. This Decree, with the exception of Sections VI.3 and XVIII, also shall apply to, benefit, and bind SAD's successors and assigns if these successors and assigns become owners of all or part of the Property, subject to and in accordance with the provision for successors-in-interest to settling parties in RCW 70.105D.040(4)(e).

IV. DEFINITIONS

Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 apply to the terms in this Decree.

A. Site: The Site, referred to as the Georgetown Plume Site, is coextensive with the areal extent of hazardous substances released from the Burlington Environmental, Inc./Philip Services Corporation facility at 734 South Lucile Street, Seattle, Washington, which in general terms runs west and southwest from that facility. It is approximately bounded to the north by South Bennett Street and to the west by the Duwamish Waterway. To the south, the approximate boundary lies within blocks of the PSC facility at its eastern end, while Slip 2 of the Duwamish Waterway is its western terminus. The area encompassed by the Site is roughly 0.5 square kilometers. The Site is more particularly described in Exhibit A to this Decree, which is a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

1 B. Parties: Refers to the Washington State Department of Ecology ("Ecology")
2 and SAD.

3 C. Defendant: Refers to SAD Properties, LLC ("SAD").

4 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
5 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
6 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

7 E. Easement. Refers to that Easement granted by SAD to PSC and recorded on
8 December ____, 2003.

9 E. Building: Refers to the building currently occupying the southern portion of the
10 Property and used by Stone Drew Ashe & Jones for business purposes.

11 F. Property: Refers to that real property located at 710 South Lucile Street,
12 Seattle, WA, 98108, currently owned by SAD.

13 G. PSC: Refers to Burlington Environmental, Inc., a wholly owned subsidiary of
14 Philip Services Corporation, and any corporate successor.

15 **V. STATEMENT OF FACTS**

16 Ecology makes the following findings of fact without any express or implied
17 admissions by SAD.

18 1. PSC is the owner and operator of a dangerous waste treatment and storage
19 facility at 734 South Lucile Street, Seattle, WA ("PSC Facility"). The PSC Facility lies to the
20 immediate east of the SAD property at 710 S. Lucile St. A permit under the federal Resource
21 Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., and the Washington
22 Hazardous Waste Management Act (HWMA), chapter 70.105 RCW, was issued to the PSC
23 Facility jointly by the United States Environmental Protection Agency and the Washington
24 State Department of Ecology on August 5, 1991 (RCRA Permit No. WAD 00812909). This
25 permit is now under the jurisdiction of Ecology under the HWMA.
26

1 2. As part of the PSC Facility's HWMA permit, corrective actions are necessary to
2 protect human health and the environment from releases of hazardous constituents from the
3 PSC Facility. Specifically, hazardous constituents have been released to soils and to
4 groundwater beneath the PSC Facility which continue to migrate. Hazardous constituents
5 released from the PSC Facility and measured in media samples at the PSC Facility include
6 petroleum hydrocarbons such as benzene, solvents such as trichloroethene (TCE) and
7 tetrachloroethene, metals, polychlorinated biphenyls (PCBs), and semi-volatiles such as
8 phenols.

9 3. From the results of groundwater sampling conducted by PSC pursuant to
10 requirements in their permit, it is apparent that hazardous constituents have migrated with
11 groundwater and have contaminated groundwater in areas downgradient of the PSC property
12 boundary. One such area is the SAD Property. Measurements of groundwater contamination
13 in areas on the SAD Property, as well as in monitoring wells downgradient of the SAD
14 Property, indicate that hazardous constituents such as TCE and other chlorinated organic
15 contaminants associated with the PSC Facility have migrated in a generally westerly and
16 southwesterly direction. This evidence of the migration of contaminants in groundwater has
17 been supplemented by measurements of soil gas contaminant levels beneath the Building on
18 the SAD Property.

19 4. Hazardous substances have been found on the SAD Property, associated with
20 releases at the PSC Facility which have migrated with groundwater, at levels in groundwater
21 that exceed State Model Toxics Control Act cleanup levels. Certain volatile constituents are
22 also at levels in shallow groundwater and soil gas that pose a potential threat to human health
23 by contaminating indoor air via vapor intrusion.

24 5. Hazardous constituents have been found in groundwater below the PSC
25 Facility, and below properties to the west and southwest of PSC, that may pose a threat to
26

1 ecological receptors at the Duwamish River, or humans who harvest and consume fish and
2 shellfish from the river.

3 6. Due to the potential risks associated with vapor intrusion and the resultant
4 contamination of indoor air, the US Environmental Protection Agency and Ecology have,
5 through permit conditions, directed PSC to install interim remedial measures in buildings as
6 necessary to protect human health. The SAD Building has been identified as one building
7 requiring such a measure. The measure will mitigate the potential health threat by actively
8 venting soil gases beneath the building floor to a stack located above the roof.

9 7. Due to the potential risks associated with contaminant migration to the
10 Duwamish River, and the objective of containing the highest levels of groundwater
11 contamination east of Denver Avenue, where there may also be contamination in the form of
12 dense non-aqueous phase liquids, and to protect future downgradient receptors from risks
13 posed by vapor intrusion, the US Environmental Protection Agency and the Department of
14 Ecology modified the PSC Facility permit to require hydraulic containment of near-Site
15 groundwater. As a result, PSC proposed a subsurface barrier wall interim measure, to be
16 installed as an enclosure around the 734 S Lucile St. and 5400 Denver Ave. S. properties, both
17 owned by PSC.

18 8. In approving this barrier wall concept, Ecology has required PSC to request
19 access from SAD for the purpose of expanding the wall alignment to include portions of the
20 SAD Property. In particular, areas beneath the north parking lot/loading area on the SAD
21 Property are known to have groundwater contamination exceeding cleanup levels under the
22 Model Toxics Control Act. Ecology has determined that this area should be enclosed behind a
23 barrier wall.

24 9. Neither Ecology nor SAD have any evidence to suggest that hazardous
25 substances have been used, placed, managed, or otherwise handled on the Property in a manner
26

1 likely to cause or contribute to the release of hazardous substances that have migrated onto the
2 Property.

3 10. SAD purchased the Property on February 15, 1998, after having leased the
4 property for approximately 17 years prior to that date. Hazardous substances from PSC had
5 migrated onto the Property prior to SAD's purchase of the Property. SAD maintains that it
6 purchased the Property only after reviewing EPA and Ecology documents indicating that PSC
7 would be the party responsible to investigate and to remediate the Site.

8 VI. WORK TO BE PERFORMED

9 This Decree contains a program designed to protect human health and the environment
10 from the known release, or threatened release, of hazardous substances or contaminants at, on,
11 or from the Site.

12 1. As directed by Ecology, SAD shall provide access to the Property to any party
13 or entity directed or authorized by the Department of Ecology, for the purposes of constructing,
14 operating, and maintaining the following remedial measures: (1) a subsurface depressurization
15 vapor intrusion mitigation measure, as described in Exhibit B; (2) a subsurface barrier wall to
16 be aligned approximately as shown in Exhibit C, in the north parking lot/loading area of the
17 Property; (3) other minor remedial, investigative, or monitoring activities, such as access for
18 air or soil sampling or for installation of monitoring or extraction wells and associated piping;
19 and (4) any other remedial measures determined to be necessary by Ecology, pursuant to the
20 reopener provisions contained in Section XV.B of this Decree. The Parties will consult in
21 good faith regarding how any such additional activities and remedial measures can be
22 implemented with the goal of avoiding interruptions to the business operations of SAD or its
23 tenants.

24 2. SAD consents to accept the use of a groundwater conditional point of
25 compliance located on the Property pursuant to WAC 173-340-720(8)(d)(ii) in the event that
26

1 the use of such a conditional point of compliance is approved by Ecology in a final Cleanup
2 Action Plan related to the Site.

3 3. SAD shall record the Easement and a Restrictive Covenant for the Property as
4 described in Section XVII below.

5 4. SAD shall comply with the restrictions on use of the Property outlined in the
6 Easement and the Restrictive Covenant including those described in XVII(6) below.

7 5. SAD agrees not to perform any remedial actions outside the scope of this
8 Decree unless the Parties agree to modify the Scope of Work to cover these actions.

9 **VII. DESIGNATED PROJECT COORDINATORS**

10 The project coordinator for Ecology is:

11 Ed Jones
12 Department of Ecology, NWRO
13 3190 – 160th Avenue S.E.
14 Bellevue, Washington 98008-5452
(425) 649-4449, voice
(425) 649-7098, fax
ejon461@ecy.wa.gov

15 The project coordinator for SAD is:

16 Bill Stone
17 Stone-Drew/Ashe & Jones
18 710 South Lucile Street
19 Seattle, WA 98108-0725
(206) 763-2850 (business)
20 (206) 763-0842 (fax)

21 Each project coordinator shall be responsible for overseeing the implementation of this
22 Decree. The Ecology project coordinator will be Ecology's designated representative for the
23 Site. To the maximum extent possible, communications between Ecology and SAD and all
24 documents, including reports, approvals, and other correspondence concerning the activities
25 performed pursuant to the terms and conditions of this Decree, shall be directed through the
26 project coordinators. If necessary, the project coordinators may designate, in writing, working

1 level staff contacts for all or portions of the implementation of the remedial actions required by
2 this Decree. The project coordinators may agree to minor changes to the actions to be
3 performed without formal amendments to this Decree. Minor changes will be documented in
4 writing by Ecology. Substantial changes shall require amendment of this Consent Decree.

5 Any Party may change its respective project coordinator. Written notification shall be
6 given to the other Parties at least ten (10) calendar days prior to the change.

7 **VIII. ACCESS**

8 Ecology or any Ecology authorized representative shall have full authority to enter and
9 freely move about the Property at all reasonable times for the purposes of carrying out the
10 terms of this Decree, including reviewing SAD's progress in carrying out the terms of this
11 Decree; conducting such tests or collecting such samples as Ecology may deem necessary;
12 using a camera, sound recording, or other documentary type equipment to record remedial
13 activities at the Property; and verifying any data submitted to Ecology with respect to the
14 Property. Ecology or any Ecology authorized representative shall give reasonable notice
15 before entering the Property unless an emergency prevents such notice. All Parties who access
16 the Property pursuant to this paragraph shall comply with the approved Health and Safety
17 Plans.

18 For the purposes of this paragraph, representatives of PSC, its successors, or any other
19 parties responsible for maintenance and monitoring of the barrier wall and interim venting
20 measure as approved by Ecology, will have access to the north parking lot area of the SAD
21 Property as specified below. This access shall be restricted to activities conducted at
22 reasonable times and pursuant to the terms of the Easement for the purposes of, inter alia:
23 conducting such tests or collecting such samples as Ecology may deem necessary; inspecting
24 the wall cap; performing diagnostic tests on the wall; repairing the wall; maintaining the wall;
25 and using a camera, sound recording, or other documentary type equipment to record work
26 done pursuant to operation and maintenance (O & M) activities associated with the wall.

1 Ecology, Ecology's authorized representatives, and any authorized parties tasked to perform
2 testing, sampling, repairing, and/or O & M activities associated with the barrier wall shall give
3 reasonable notice before entering the Property unless an emergency prevents such notice. All
4 Parties who access the Property pursuant to this paragraph shall comply with the approved
5 Health and Safety Plans.

6 **IX. SAMPLING, DATA REPORTING, AND AVAILABILITY**

7 With respect to the implementation of this Decree, SAD shall make the results of any
8 sampling, laboratory reports, and/or test results generated by SAD or consultants under the
9 direction of SAD available to Ecology and shall submit these results in accordance with
10 Section VII of this Decree. If requested by Ecology, SAD shall allow split or duplicate
11 samples to be taken by Ecology and/or its authorized representative of any samples collected
12 by SAD. SAD shall notify Ecology seven (7) days in advance of any sample collection or
13 work activity at the Property. Ecology shall, upon request, allow split or duplicate samples to
14 be taken by SAD or its authorized representative of any samples collected by Ecology pursuant
15 to the implementation of this Decree, provided it does not interfere with Ecology's sampling.
16 Without limitation on Ecology's rights under Section IX, Ecology shall notify SAD prior to any
17 sample collection activity unless an emergency prevents such notice.

18 **X. RETENTION OF RECORDS**

19 During the pendency of this Decree and for ten (10) years from the date this Decree is
20 no longer in effect as provided in Section XX, SAD shall preserve all records, reports,
21 documents, and underlying data in its possession relevant to the implementation of this Decree
22 and the releases and remedial measures related to this Decree, or send copies of all such
23 records to Ecology's designated project coordinator. SAD shall insert a similar record
24 retention requirement into all contracts with any project contractors and subcontractors. Upon
25 Ecology's request, SAD shall make all non-archived records available to Ecology and allow
26 access for review. All archived records shall be made available to Ecology within a reasonable

1 period of time. To the extent any future owner of this Property produces any records under this
2 Decree, such owner shall be responsible for retaining such records and providing access to
3 such record consistent with the terms of this provision. Such owner shall not be responsible
4 for any other owner's records.

5 **XI. TRANSFER OF INTEREST IN PROPERTY**

6 Prior to SAD's transfer of any interest in all or any portion of the Property during the
7 effective period of this Decree, SAD shall provide a copy of this Decree to any prospective
8 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty
9 (30) days prior to any transfer, SAD shall notify Ecology of said transfer. SAD shall restrict
10 uses and activities to those consistent with this Consent Decree and notify all transferees of the
11 restrictions on the use of the property, by recording the Easement and the Restrictive Covenant
12 described in Section XVII of this Decree. If SAD leases all or any portion of the Property, it
13 shall attach a copy of the Restrictive Covenant and the Easement to the lease agreement.

14 **XII. RESOLUTION OF DISPUTES**

15 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
16 other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute
17 resolution procedure set forth below.

18 (1) Upon receipt of the Ecology project coordinator's decision, SAD has fourteen
19 (14) days within which to notify Ecology's project coordinator of its objection to the decision.

20 (2) The Parties' project coordinators shall then confer in an effort to resolve the
21 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
22 Ecology's project coordinator shall issue a written decision.

23 (3) SAD may then request Ecology management review of the decision. This
24 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
25 days of receipt of Ecology's project coordinator's decision.
26

1 (4) Ecology's Program Manager shall conduct a review of the dispute and shall
2 issue a written decision regarding the dispute within thirty (30) days of SAD's request for
3 review. The Program Manager's decision shall be Ecology's final decision on the disputed
4 matter.

5 B. If Ecology's final written decision is unacceptable to SAD, SAD has the right to
6 submit the dispute to the Court for resolution. The Parties agree that one judge should retain
7 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this
8 Decree. In the event SAD presents an issue to the Court for review, the Court shall review the
9 action or decision of Ecology on the basis of an appropriate standard of review and render a
10 decision based on such standard of review.

11 C. The Parties agree to only utilize the dispute resolution process in good faith and
12 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
13 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
14 the other Party may seek sanctions.

15 Implementation of these dispute resolution procedures shall not provide a basis for
16 delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
17 extension or the Court so orders.

18 **XIII. AMENDMENT OF CONSENT DECREE**

19 This Decree may only be amended by a written stipulation among the Parties that is
20 entered by the Court, or by order of the Court. Such amendment shall become effective upon
21 entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any
22 Party.

23 SAD shall submit any request for an amendment to Ecology for approval. Ecology
24 shall indicate its approval or disapproval in a timely manner after the request for amendment is
25 received. If the amendment to the Decree represents a significant change, Ecology will
26 provide public notice and opportunity for comment. Reasons for the disapproval of a proposed

1 amendment to the Decree shall be stated in writing. If Ecology does not agree to any proposed
2 amendment, the disagreement may be addressed through the dispute resolution procedures
3 described in Section XII of this Decree.

4 **XIV. ENDANGERMENT**

5 If, for any reason, Ecology determines that any activity being performed by SAD at the
6 Property pursuant to this Decree is creating or has the potential to create a danger to human
7 health or the environment, Ecology may issue an order directing SAD to cease such activities
8 for such period of time as it deems necessary to abate the danger, unless circumstances are
9 sufficiently exigent to preclude Ecology from preparing and issuing an order.

10 **XV. COVENANT NOT TO SUE**

11 A. Covenant Not to Sue; Matters Addressed: In consideration of SAD's
12 compliance with the terms and conditions of this Decree, Ecology covenants not to institute
13 legal or administrative actions against SAD regarding the release or threatened release of
14 hazardous substances covered by this Decree.

15 This Covenant Not to Sue covers only the Site specifically identified in Exhibit A and
16 those hazardous substances that Ecology knows are located at the Site as of the date of entry of
17 this Decree. This Decree does not cover any other hazardous substance or area. Ecology
18 retains all of its authority relative to any substance or area not covered by this Decree.

19 This Covenant Not to Sue shall have no applicability whatsoever to:

- 20 (1) Criminal liability;
21 (2) Liability for damages to natural resources;
22 (3) Any Ecology action, including cost recovery, against potentially liable persons
23 not a party to this Decree.

24 B. Reopeners: Ecology specifically reserves the right to institute legal or
25 administrative action against SAD under the following circumstances:
26

1 (1) To enforce this Decree, including recovery of costs and attorneys fees under
2 70.105D.050(1)(A) upon SAD's failure to meet the requirements of this Decree after notice
3 and opportunity to cure;

4 (2) Upon Ecology's determination that action beyond the terms of this Decree is
5 necessary to abate an imminent and substantial endangerment to human health or the
6 environment;

7 (3) To take legal or administrative action, including pursuit of cost recovery
8 pursuant to RCW 70.105D.050 if and when appropriate, upon the discovery of new
9 information regarding material factors previously unknown to Ecology, including the nature or
10 quantity of hazardous substances at the Property, and Ecology determines, in light of this
11 information, that further remedial action is necessary at the Property to protect human health or
12 the environment; or

13 (4) To require SAD to maintain the subsurface depressurization vapor intrusion
14 mitigation measure described in Section VI.1(1) and Exhibit B of this consent decree, upon the
15 failure of PSC or any successor of PSC to fulfill the obligations of its HWMA permit and/or an
16 enforceable instrument issued pursuant to MTCA with respect to the maintenance of this
17 remedial measure. In such an event, Ecology warrants that prior to instituting any legal or
18 administrative action against SAD pursuant to this paragraph, it will make reasonable efforts
19 within its legal jurisdiction to ensure compliance with such requirements by PSC or any of
20 PSC's successors, including utilizing any financial assurance required to be maintained by PSC
21 or its successors under the HWMA and/or MTCA. Ecology warrants that in the event it
22 attempts to utilize such financial assurance and to the extent such funds exist, Ecology has
23 authority to expend or direct all or a portion of such funds toward remedial measures located
24 on the Property; provided, that nothing in this paragraph shall be construed to create a promise
25 or obligation on the part of Ecology to expend or direct such funds toward remedial measures
26

1 on the Property. Ecology warrants that it will not exhaust such funds through recovery of or
2 application to oversight costs or past costs of any kind.

3 C. Neither these reopeners nor any other provision of this Consent Decree allow
4 Ecology to institute legal or administrative action against SAD for any installation,
5 maintenance, repair, replacement, or other future activity that may be necessary in connection
6 with the subsurface barrier wall or other unspecified remedial activity described in Sections
7 VI.1(2) and VI.1(3) and Exhibit C of this Consent Decree, even if the cost of such future
8 activity is increased by the potential construction of a building over the subsurface barrier wall
9 as provided for in Section XVII of this Consent Decree.

10 D. Except in the case of an emergency, prior to instituting legal or administrative
11 action against SAD pursuant to paragraph B. above, Ecology shall provide SAD with thirty
12 (30) calendar days notice of such action.

13 **XVI. CONTRIBUTION PROTECTION**

14 With regard to any claims for contribution against SAD, the Parties agree that SAD is
15 entitled to protection against claims for contribution for matters addressed in this Decree as
16 provided by RCW 70.105D.040(4)(d).

17 **XVII. LAND USE RESTRICTIONS**

18 Because residual concentrations of hazardous substances at the Property will exceed
19 residential cleanup levels following completion of the remedial action, SAD agrees that the
20 Restrictive Covenant (attached as Exhibit D) shall be recorded with the office of the King
21 County Auditor within ten (10) days of the effective date of this Consent Decree. SAD will
22 provide Ecology with a copy of the recorded Restrictive Covenant and Easement within thirty
23 (30) days of each respective recording date. The Restrictive Covenant shall restrict future uses
24 of the Property by: (1) prohibiting the installation of any wells on the property for the purposes
25 of obtaining drinking water; (2) prohibiting the development of the property for residential
26 uses; (3) prohibiting the use or development of the property for purposes that may result in the

1 release of hazardous substances that have been contained by the barrier wall, without prior
2 written approval by Ecology; (4) prohibiting any activities on the Property that may interfere
3 with the wall, without prior written approval by Ecology which approval shall be granted after
4 Ecology's engineering review to confirm lack of interference, even if approval of such
5 activities may increase the expense of monitoring, maintenance or repair of the wall; (5)
6 limiting the use of the Building to periods when the subsurface depressurization vapor
7 intrusion mitigation measure is effectively operating, provided: (a) that SAD may discontinue
8 operation of the mitigation measure upon notice from Ecology that the measure is no longer
9 required to protect human health; and (b) that during periods when the mitigation measure is
10 not effectively operating due to malfunction, SAD may continue to use the building during and
11 after performance of the following activities: (i) Ecology is notified of the condition within 24
12 hours of its discovery; (ii) a plan for servicing the mitigation measure to restore effective
13 operation is developed and submitted to Ecology within 5 working days of the condition's
14 discovery; (iii) repair of the measure is successfully completed in accordance with an approved
15 plan and schedule; and (iv) Ecology does not direct SAD to cease use of the building pursuant
16 to Section XIV above; and (6) prohibiting any digging or other subsurface intrusive activities
17 on the property, except those in compliance with a Health and Safety Plan protective of
18 workers. Consistent with Section XV.C and the language of this section, above, these
19 restrictions do not prohibit redevelopment of the property or construction of a building over the
20 north parking lot to the maximum extent allowed by zoning law.

21 **XVIII. INDEMNIFICATION**

22 SAD agrees to indemnify and save and hold the State of Washington, its employees,
23 and agents harmless from any and all claims or causes of action for death or injuries to persons
24 or for loss or damage to property arising from or on account of acts or omissions of SAD, its
25 officers, employees, agents, or contractors in entering into and implementing this Decree.
26 However, SAD shall not indemnify the State of Washington nor save nor hold the State of

1 Washington, its employees and agents harmless from any claims or causes of action arising out
2 of the negligent acts or omissions of the State of Washington, or the employees or agents of the
3 State, in implementing any activities pursuant to this Decree.

4 **XIX. COMPLIANCE WITH APPLICABLE LAWS**

5 A. All actions carried out by SAD pursuant to this Decree shall be done in
6 accordance with all applicable federal, state, and local requirements, including any
7 requirements to obtain necessary permits, except as excepted pursuant to RCW
8 70.105D.090(1).

9 **XX. DURATION OF DECREE**

10 The actions described in the Decree shall be maintained and continued until SAD has
11 received written notification from Ecology that the requirements of this Decree have been
12 satisfactorily completed. This Decree shall remain in effect until dismissed by this Court.
13 When dismissed, Section XV, Covenant Not to Sue and Section XVI, Contribution Protection
14 shall survive, and the Restrictive Covenant recorded pursuant to Section XVII may be
15 removed.

16 **XXI. CLAIMS AGAINST THE STATE**

17 SAD hereby agrees that it will not seek to recover any costs accrued in implementing
18 the remedial action required by this Decree from the State of Washington or any of its
19 agencies; and further, that SAD will make no claim against the State Toxics Control Account
20 or any Local Toxics Control Account for any costs incurred in implementing this Decree.
21 Except as provided above, however, SAD expressly reserves its right to seek to recover any
22 costs incurred in implementing this Decree from any other potentially liable person.

23 **XXII. EFFECTIVE DATE**

24 This Decree is effective upon the date it is entered by the Court.
25
26

1 **XXIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

2 This Decree has been the subject of public notice and comment under RCW
3 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to
4 a more expeditious cleanup of hazardous substances in compliance with cleanup standards and
5 with any remedial orders issued by the department associated with the Site.

6 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
7 at the option of any party and the accompanying Complaint shall be dismissed without costs
8 and without prejudice. In such an event, no party shall be bound by the requirements of this
9 Decree.

10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE

Attorney General

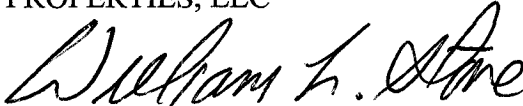
12 _____
13 Greg Sorlie
14 Program Manager
Hazardous Waste and Toxics Reduction
Program

ANDREW A. FITZ, WSBA #22169
Assistant Attorney General

15 Date: _____

16 Date: _____

17 SAD PROPERTIES, LLC

18 
19 Name: William L. Stone

20 Title: Partner

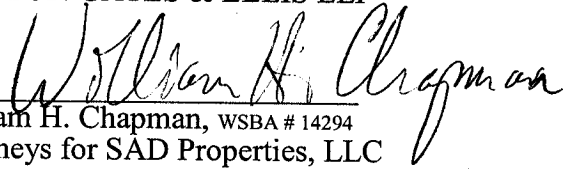
21 Date: 12-4-03

22 Entered this _____ day of _____, 20____.

23 _____
24 JUDGE
25 King County Superior Court
26

1 Approved as to Form Only

2 PRESTON GATES & ELLIS LLP

3 
4 William H. Chapman, WSBA # 14294
5 Attorneys for SAD Properties, LLC
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